

Goss ■ Samford PLLC



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July 29, 2013

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JUL 29 2013

PUBLIC SERVICE
COMMISSION

Via Hand-Delivery

Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602

Re: In the Matter of: Harold Barker; Ann Barker and
Brooks Barker v. East Kentucky Power Cooperative, Inc.
PSC Case No. 2013-00291

Dear Mr. Derouen:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies of East Kentucky Power Cooperative, Inc.'s Offer of Settlement. Please return a file-stamped copy to me.

Do not hesitate to contact me if you have any questions.

Very truly yours,

David S. Samford

Enclosures

M:\Clients\4000 - East Kentucky Power\1350 - Harold Barker Complaint -
PSC Case No. 2013-00291\Correspondence\Ltr. to Jeff Derouen - 130729.docx

COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

JUL 29 2013

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

HAROLD BARKER; ANN BARKER)
AND BROOKS BARKER)

COMPLAINANTS)

V.)

EAST KENTUCKY POWER)
COOPERATIVE, INC.)

DEFENDANT)

Case No. 2013-00291

OFFER OF SETTLEMENT OF
EAST KENTUCKY POWER COOPERATIVE, INC.

Comes now the Defendant, East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, pursuant to the Commission's July 18, 2013 Order, and other applicable law, and, as an Offer of Settlement to the Formal Complaint filed on or about July 5, 2013 by the Complainants, Harold Barker, Ann Barker and Brooks Barker (the "Barkers"), does hereby respectfully state as follows:

1. EKPC does not agree with many of the representations set forth in the Complaint and reserves the right to file a more detailed Answer if this Offer of Settlement is not accepted by the Barkers or the Commission. EKPC expressly reserves any and all affirmative defenses or objections to the Complaint to include, without limitation, that: (1) to the extent that the Complaint may relate to issues not related to the "rates" or "service" of EKPC, it is not within the Commission's jurisdiction; (2) the Complaint improperly requests the Commission to award

damages; (3) the Complaint fails to show a prima facie violation of any statute in KRS Chapter 278 or any Commission regulation or Order; (4) the Complainants are not “customers” of EKPC; (5) the Complaint presents issues already subject to the jurisdiction of the Clark Circuit Court; (6) estoppel; (7) assumption of risk; and (8) waiver.

2. On information and belief, the Barkers constructed the structures identified in the Complaint after EKPC’s original transmission line was constructed. The transmission line is an overhead line and was therefore plainly visible to the Barkers at the time of the construction of these structures. The Barkers therefore constructed the structures with actual knowledge of the presence of EKPC’s transmission line and, at a minimum, with constructive knowledge of the scope and extent of EKPC’s easement which was filed as a matter of public record. The Barkers therefore accepted any risk – real or imagined – that such lines would ever be replaced or upgraded.

3. As a result of a need to replace and upgrade the existing transmission line, EKPC commenced a civil action in the Clark Circuit Court on July 7, 2006 to condemn a portion of the Barker’s property, which may be described as a parcel located on the north side of U.S. Highway 60 approximately 800 feet north of I-64 in Clark County, Kentucky and consisting of approximately 150 acres. That condemnation proceeding is styled as *East Kentucky Power Cooperative, Inc. v. Harold Barker, et al.* and docketed as Case No. 06-CI-00419 (the “Civil Action”). The Trial Commissioners issued a report in the Civil Action on August 1, 2006 that set the diminution in value of the property condemned by EKPC at \$12,000. EKPC has attempted to engage in pretrial discovery, but no responses have yet been received from the Barkers to support the contention that the Commissioner’s award is too low. The parties have engaged in mediation as part of the Civil Action, and extensive settlement negotiations have

been conducted, but no resolution has been reached. EKPC has offered to discuss moving the Barkers' house to another location on their property away from the transmission line and has offered to purchase their house at a mutually agreed upon appraised value. However, the Barkers have not accepted any of EKPC's offers.

4. The Barkers have apparently employed an independent appraiser who verbally indicated to EKPC's counsel in the Civil Action that the diminution in the value of the Barker property caused by EKPC's transmission line was \$179,000.¹ EKPC does not agree that this is the fair market value of the subject property's diminution in value as it is quite out of line with the Trial Commissioners' award. EKPC's counsel in the Civil Action has subsequently been verbally advised by the Barkers' counsel that their appraiser has subsequently raised his estimate of the diminution in value to approximately \$400,000.00. According to the property records of the Clark County Property Valuation Administrator, however, the entire 150 acre property owned by the Barkers is valued at \$317,900.²

5. The transmission line in question is within the area of EKPC's existing easement, or the additional right-of-way condemned by EKPC pursuant to an Agreed Interlocutory Judgment entered in the Civil Action on November 17, 2006 and is therefore lawfully located. The line was also lawfully constructed. EKPC estimates that the cost of moving the transmission line to accommodate the Barker's request to relocate the transmission line is approximately \$1 million. It would be unfair, unjust and unreasonable to require EKPC's members to pay for the relocation of a lawful transmission line if the costs of such relocation exceed the fair market value of the property allegedly affected by the current location of the transmission line.

¹ EKPC has not been provided with a copy of any documentation to support claimed valuations by the Barkers.

² A copy of this valuation is attached hereto and incorporated herein as Exhibit 1.

6. EKPC hereby tenders an Offer of Settlement to satisfy the Barker's Complaint and as a Settlement of the Civil Action. EKPC will either: (a) pay the diminution in value of the Barker's property that has occurred as a result of the condemnation of a portion of their property; or (b) purchase the Barkers' house and a mutually agreed upon lot surrounding the house. For either settlement offer, the payment or purchase price shall be established by an independent expert appraiser to be mutually agreed upon by EKPC and the Barkers or to be selected by the Commission. This Offer of Settlement is conditioned upon the Barkers and EKPC entering into suitable settlement documents and the Commission's and Clark Circuit Court's approval of such a settlement as it relates to the Complaint.

This 29th day of July, 2013.

Respectfully submitted,



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and

Sherman Goodpaster
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P.O. Box 707
Winchester, KY 40392-0707

*Counsel for East Kentucky Power
Cooperative, Inc.*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served, by delivering same to the custody and care of the U.S. Postal Service, postage pre-paid, this 29th day of July, 2013, addressed to the following:

Harold, Ann & Brooks Barker
5450 Mt. Sterling Road
Winchester, KY 40391

Mr. Alex Rowady, Esq.
212 South Maple Street
Winchester, KY 40391



*Counsel for East Kentucky Power
Cooperative, Inc.*



**Clark County Kentucky
Property Valuation Administrator**

Karen R. Bushart
karenr.bushart@clarkpva.com

34 S. Main Street
Winchester, KY 40391
Phone: 859-745-0250
Fax: 859-745-0205

Hours: 8:00a.m.-4:00p.m. Tue-Fri
8:00a.m.-5:00p.m. Mondays

Recent Sales in Area	Previous Parcel	Next Parcel	Field Definitions	Return to Main Search Page	Subscription Home	Clark Home
Owner and Parcel Information						
Owner Name	BARKER ANN BROOKS BARNES		Today's Date	July 24, 2013		
Mailing Address	5450 MT STERLING RD WINCHESTER, KY 40391		Map Number/Account Number	088-0000-001-00 /8090001		
Description	PARCEL 1A & BAL OF LAND		Tax District	County		
Location Address	5450 MT STERLING RD		2012 Rate Per Thousand	0.8820		
Deed Book	212		Parcel Map	Maps available with subscription		
Deed Page			Deed Page	133		
Building Photo	Building Images		Building Sketch	Building Sketches		

Certified Value Information							
Residential Value	Commercial Value	Mobile Home Value	Farm Tax Value	Farm Fair Cash Value	TC Build Value	TC Land Value	LS Hold Value
NA	NA	NA	\$ 186,000	\$ 317,900	NA	NA	NA
Homestead: Yes							

More detailed information is available via subscription service. Details [here](#)

The Clark County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. Website Updated: July 24, 2013

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